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Subject: U.S. TRADEMARK APPLICATION NO. 77115548 - WHITE JASMINE -
N/A - EXAMINER BRIEF - Message 1 of 0

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

APPLICATION SERIAL NO. 77115548

MARK: WHITE JASMINE



CORRESPONDENT ADDRESS:

TRICIA L SCHULZ
FOLEY & LARDNER LLP
150 E GILAN ST
MADISON, WI 53705

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

TTAB INFORMATION:

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

APPLICANT: White Jasmine LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

EXAMINING ATTORNEY'S SUPPLEMENTAL APPEAL BRIEF

I. INTRODUCTION

On July 15, 2011, the examining attorney submitted an appeal brief. The issues on appeal were (1) whether the wording "WHITE" in the mark is deceptive in relation to the identified goods pursuant to Trademark Act Section 2(a), 15 U.S.C. §1052(a) and alternatively, (2) whether applicant must disclaim the wording "WHITE JASMINE" pursuant to 15 U.S.C. §§1052(e)(1), 1056(a). TMEP §1213.03 *et seq.*

In response to the appeal brief, applicant submitted a reply brief in which the applicant responded to the refusal and requirement and requested that the case be remanded so that the applicant could address the acquired distinctiveness issue.

In accordance with the Trademark Trial and Appeal Board's Order of October 26, 2011, applicant submitted a request for remand on December 22, 2011, which included additional evidence. This Supplemental Appeal Brief is submitted in response to applicant's additional arguments and evidence.

II. APPLICANT'S ARGUMENTS WITH RESPECT TO THE TRADEMARK ACT SECTION 2(a) REFUSAL

Applicant argues that the applied-for mark is not deceptive because it is clear that the term "WHITE" in the mark modifies the term "JASMINE" to identify a type of flower rather than a type of tea. (Applicant's Reply Brief, October 17, 2011, p. 3). However, as demonstrated by the evidence previously attached by the examining attorney, consumers commonly encounter the wording "WHITE JASMINE" in connection with tea products to identify *white* tea scented with jasmine flowers. The examining attorney notes the following examples:

- "Choice Organic **White Jasmine** Tea... In this enchanting cup, we marry specially plucked white tea leaves and buds with ambrosial jasmine scented green tea to create a delicate and sweet cup with mild hits of fragrant flowers." (*See* June 18, 2007, Office action, pp. 11-15, p. 12)
- "**White Jasmine** Tea... This is a delicate brew with a faint taste of lemon balm on top of the jasmine bud and white tea base." (*See* September 8, 2010, Office action, pp. 20-21, p. 21)
- "**White Jasmine** Tea" (Numi Flowering Tea) – www.shopwiki.com (September 15, 2008, Office action, p. 10)

Accordingly, the commercial impression of the mark is that of white tea scented with jasmine flowers.

Applicant also argues that the ingredient white tea is not likely to affect the purchasing decisions of a significant portion of the relevant consumers. Specifically, applicant argues that presence of white tea reflects mere personal preferences. (Applicant's Reply Brief, October 17, 2011, p. 4). In support this argument, applicant notes the examining attorney's evidence includes references to the health benefits of green tea in addition to the health benefits of white tea. However, the mere fact that another type of tea has health benefits does not negate or diminish the fact that the health

benefits and value of white tea affects the purchasing decisions of a significant portion of the relevant consumers. Moreover, as demonstrated by the examining attorney's previously attached evidence, there are particular health benefits associated with white tea which distinguish it from other types of teas. The examining attorney notes the following references to the specific and well-touted benefits of white tea:

- “White tea is the least processed of all the tea and it is because of this that there are so many health benefits to drinking white tea.” (See September 8, 2010, Office action, pp. 10-11, p. 10)
- “Undergoing less processing than many other tea varieties, white tea can have ten times the antioxidant power of vitamin E and impressively high concentrations of polyphenols and catechins.” (See September 8, 2010, Office action, pp. 5-7, p. 5)
- “Because white tea is carefully harvested and processed, it contains far more antioxidants than any other form of tea, even the highly popular green variety... With the caffeine, fluoride and antioxidants that are found in white tea, it is no wonder that it has become such a popular drink around the world.” (See September 8, 2010, Office action, pp. 8-9)
- “White Jasmine Tea... Interestingly, because white tea is only produced once a year and there are few growers, it is considered rare. Therefore, quality white tea is a little more challenging to find and it is the most expensive tea sold.” (See September 8, 2010, Office action, pp. 22-25, p.24)

Applicant also argues that the examining attorney's evidence with respect to the health benefits of white tea is insufficient because the evidence is not from reliable authorities. In response to this argument, the examining attorney has attached additional evidence with respect to the health benefits of white tea from the U.S. National Library of Medicine National Institutes of Health website, www.pubmed.gov. The examining attorney notes the following examples:

- “In the present study, we demonstrate that white tea extracts protect striatal cell lines against oxidative stress-mediated cell death. The effects of white tea on protection of striatal cell cultures are likely associated with the antioxidant properties of white tea components since neuronal cell loss induced by nonoxidative insults such as D1 dopamine receptor activation cannot be prevented

by pre-treatment with white tea. Altogether our results suggest that regular consumption of white tea may contribute to reduce oxidative stress associated with brain injury and be clinically useful for treating age-related and neurodegenerative disorders.” **Neuroprotective effects of white tea against oxidative stress-induced toxicity in striatal cells.** <http://www.ncbi.nlm.nih.gov/pubmed/21698507>

- “Our study concludes that both [green tea] GT and [white tea] WT are effective in combating [benzo(a)pyrene] BaP induced oxidative insult and DNA damage. However, WT was found to be more protective than GT with respect to [catalase] CAT (only in the liver), percentage of DNA in comet tail (only in the lungs), GST activity, and [glutathione] GSH content in both the tissues.” **Protective Effects of Green and White Tea Against Benzo(a)pyrene Induced Oxidative Stress and DNA Damage in Murine Model.** <http://www.ncbi.nlm.nih.gov/pubmed/22243054>
- “White Tea extract is a natural source that effectively inhibits adipogenesis and stimulates lipolysis-activity. Therefore, it can be utilized to modulate different levels of the adipocyte life cycle.” **White Tea extract induces lipolytic activity and inhibits adipogenesis in human subcutaneous (pre)-adipocytes.** <http://www.ncbi.nlm.nih.gov/pubmed/19409077>
- “Recent investigations have associated white teas with anti-carcinogenic, immune-boosting, and antioxidative properties that may impact human health in a manner comparable to green teas.” **White and green teas (Camellia sinensis var. sinensis): variation in phenolic, methylxanthine, and antioxidant profiles.** <http://www.ncbi.nlm.nih.gov/pubmed/20722909>
- “The data imply that white tea, caffeine, and EGCG may be most effective post-initiation, via the inhibition of cell proliferation in the colon and through the suppression of early lesions.” **Comparison of white tea, green tea, epigallocatechin-3-gallate, and caffeine as inhibitors of PhIP-induced colonic aberrant crypts.** <http://www.ncbi.nlm.nih.gov/pubmed/17571968>
- “Dietary white tea inclusion decreased plasma glucose levels under normoxia and seemed to induce an increase in anaerobic pathways as showed by enhanced liver lactate dehydrogenase activity.” **The effect of hypoxia on intermediary metabolism and oxidative status in gilthead sea bream (Sparus aurata) fed on diets supplemented with methionine and white tea.** <http://www.ncbi.nlm.nih.gov/pubmed/22227440>
- “Numerous reports have identified therapeutic roles for plants and their extracts and constituents. The aim of this study was to assess the efficacies of three plant extracts for their potential antioxidant and anti-inflammatory activity in primary human skin fibroblasts... These data show that the extracts and products tested have a protective effect on fibroblast cells against hydrogen peroxide induced

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